

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

BILLY FLEMING,

Plaintiff,

v.

CIVIL ACTION NO. 5:08-cv-00267

STATE OF WEST VIRGINIA, et al.,

Defendants.

MEMORANDUM OPINION

Pending before the Court is Plaintiff's Application to Proceed Without Prepayment of Fees [Docket 1]. By Standing Order entered on August 1, 2006, and filed in this case on April 21, 2008, this action was referred to United States Magistrate Judge R. Clarke VanDervort for submission of proposed findings and a recommendation (PF&R). Magistrate Judge VanDervort filed his PF&R [Docket 8] on March 16, 2009, recommending that this Court deny Plaintiff's Application to Proceed Without Prepayment of Fees, dismiss Plaintiff's Complaint [Docket 3], and remove this matter from the Court's docket.

The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and Plaintiff's right to appeal this Court's Order. *Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge VanDervort's PF&R were

due by April 2, 2009, pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b). To date, no objections have been filed.

Accordingly, the Court **ADOPTS** the PF&R [Docket 8] in its entirety, **DENIES** Plaintiff's Application to Proceed Without Prepayment of Fees [Docket 1], **DISMISSES** Plaintiff's Complaint [Docket 3], and **DISMISSES** this case with prejudice. A separate Judgment Order will enter this day implementing the rulings contained herein.

IT IS SO ORDERED.

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: April 7, 2009



THOMAS E. JOHNSTON
UNITED STATES DISTRICT JUDGE